

WALLER LANSDEN DORTCH & DAVIS, PLLC

WALLER LANSDEN DORTCH & DAVIS PLLC
THE CHESAPEAKE BUSINESS CENTRE
1616 WESTGATE CIRCLE, SUITE 106
BRENTWOOD, TENNESSEE 37027-8019
(615) 844 6212

WALLER LANSDEN DORTCH & DAVIS LLP
AFFILIATED WITH THE PROFESSIONAL LIMITED LIABILITY COMPANY
520 SOUTH GRAND AVENUE, SUITE 800
LOS ANGELES CALIFORNIA 90071
(213) 362 3680

NASHVILLE CITY CENTER
511 UNION STREET, SUITE 2700
Post Office Box 198966
NASHVILLE, TENNESSEE 37219-8966
(615) 244-6380
FAX (615) 244-6804
www.wallerlaw.com

WALLER LANSDEN DORTCH & DAVIS PLLC
809 SOUTH MAIN STREET
Post Office Box 1035
COLUMBIA TENNESSEE 38402 1035
(931) 388 6031

D. Billye Sanders
(615) 850-8951
billye.sanders@wallerlaw.com

September 23, 2004

VIA HAND DELIVERY

Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37219

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2004 SEP 23 AM 9:31
T.R.A. DOCKET ROOM

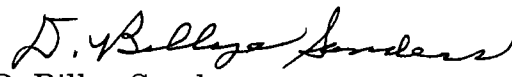
04-00310

Re: Petition of Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks for Arbitration of a Collocation Agreement with Citizens Telecommunications Company of Tennessee L.L.C. or, in the alternative, for Resolution of Complaint against Citizens regarding Denial of Collocation Request

Dear Chairman Miller,

Enclosed you will find the original and 13 copies of the Petition of Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks for Arbitration of a Collocation Agreement with Citizens Telecommunications Company of Tennessee L.L.C. or, in the alternative, for Resolution of Complaint against Citizens regarding Denial of Collocation Request. I have also enclosed a check for \$25.00 for the filing fee. Please contact me if you need additional information.

Sincerely,


D. Billye Sanders
Attorney for Iris Networks

cc: Ellen Bryson, Chief Manager
Gregg C. Sayre, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF TENNESSEE
INDEPENDENT TELECOMMUNICATIONS
GROUP, LLC D/B/A IRIS NETWORKS
FOR ARBITRATION OF A COLLOCATION
AGREEMENT WITH CITIZENS
TELECOMMUNICATIONS COMPANY OF
TENNESSEE L.L.C. OR, IN THE
ALTERNATIVE, FOR RESOLUTION OF
COMPLAINT AGAINST CITIZENS
REGARDING DENIAL OF COLLOCATION
REQUEST**

Docket No. 04-_____

PETITION

Comes now Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks ("Iris") pursuant to § 252 of the Telecommunications Act of 1996 ("The Act") and hereby petitions the Tennessee Regulatory Authority ("TRA" or "Authority") to arbitrate the issue of the obligation of Citizens Telecommunications Company of Tennessee L.L.C. ("Citizens") to allow Iris to collocate Iris' equipment necessary for interconnection with Citizens' network in Citizens' Cookeville central office under 47 U.S.C. § 251 (c)(6). In the alternative, Iris files this Petition with the TRA as a complaint pursuant to TRA Rule 1220-4-8-.09 regarding Citizens' refusal to negotiate a collocation agreement and requests that the Authority order Citizens to allow Iris to collocate in Citizens' central office pursuant to a nondiscriminatory collocation agreement to be negotiated by the parties as required by 47 U.S.C. § 251 (c)(6) and TRA Rule 1220-4-8-.09 (c)(3).

Communications regarding this petition should be sent to:

D. Billye Sanders, Esq.
Waller Lansden Dortch & Davis, PLLC
511 Union Suite 2700
Nashville, Tennessee 37219
(615) 244-6380
(615) 244-6804 (facsimile)

and

Ellen Bryson
Chief Manager
Iris Networks
211 Commerce Street Suite 610
Nashville, Tennessee 37201
(615) 298-1623
(615) 986-2092 (facsimile)

In support of this Petition Iris states the following:

Statement of Facts

Iris is a Tennessee limited liability company with its principal office located at 211 Commerce Street, Suite 610, Nashville, TN 37201. Iris is authorized in the State of Tennessee to provide competitive access services and transport telecommunications services.¹ Iris is not a competitive local exchange carrier ("CLEC"), nor is it an interexchange carrier ("IXC"). It is a carriers' carrier that provides transport for CLECs and IXCs.

Citizens is an incumbent local exchange carrier ("ILEC") that serves the Cookeville area in Putnam County, Tennessee. Citizens is subject to price regulation pursuant to order of the Tennessee Public Service Commission (the predecessor agency to the TRA) in Docket No. 96-00010.

¹ Iris' authority was granted by the Tennessee Regulatory Authority in Docket Number 03-00581.

By letter dated April 15, 2004, Iris made a request to Citizens to collocate in the Cookeville Main Central Office of Citizens. (Copy of letter attached as Exhibit A²). By letter dated April 27, 2004, Citizens responded to Iris' letter indicating that Iris is not legally entitled to collocate in Citizens' Cookeville central office because Iris is not considered a CLEC. (Copy of letter attached as Exhibit B).

On a conference call on May 25, 2004, legal counsel and business representatives from Citizens and Iris discussed Iris' request for collocation and Citizens again denied the request. By letter dated July 21, 2004 (Copy of letter attached as Exhibit C), Iris set forth its legal position and facts which support its position that Citizens is required to allow Iris to collocate in the Cookeville central office pursuant to §251(c)(6) of the Telecommunications Act. In the letter, Iris requested Citizens to reconsider its position and allow Iris to collocate in the Citizens Cookeville central office.

By letter dated August 2, 2004 (Copy of letter attached as Exhibit D), Citizens again denied Iris' request for collocation. The repeated denial of Iris' request has prompted Iris to seek enforcement by the TRA of Citizens' duty to allow Iris to collocate pursuant to the Telecommunications Act.

Jurisdiction

Pursuant to 47 U.S.C. § 252(b)(1), during the period from the 135th day to the 160th day (inclusive) after the date on which an ILEC receives a request for negotiation under Section 252, any party to the negotiation may petition the State Commission to arbitrate any open issues. Citizen received Iris' request on April 20,

² Citizens received the letter attached as Exhibit A on April 20, 2004, as evidenced by the postal receipt included in Exhibit A.

2004. The period 135-160 days after the date of Citizen's receipt of the request is September 2 – September 27, 2004. Therefore, the petition is timely filed. Since Citizens refused to negotiate an agreement, the issue to be arbitrated is whether pursuant to 47 U.S.C. § 251(c), Citizens has an obligation to provide physical collocation to Iris.

In the alternative, if the Authority believes that arbitration is not appropriate, Iris requests that the Authority resolve this matter as though it were a complaint of Iris against Citizens for refusal to negotiate a collocation agreement in contravention of Section 251 of the Telecommunications Act which is an anti-competitive practice in violation of T.C.A. § 65-5-209(c) and TRA Rule 1220-4-8.09 (c)3.

Issues for Arbitration

The issue for arbitration or resolution of the complaint is whether Citizens has a duty to allow Iris to collocate in its Cookeville main central office pursuant to Section 251(c)(6) of the Telecommunications Act. Iris reserves the right to amend this Petition to address any issues not discussed herein that are brought forward by the TRA, Citizens or any other party.

Iris' Position on the Issue

It is the position of Iris that Citizens, as an ILEC, has a duty to provide Iris physical collocation of Iris' equipment necessary to interconnect with Citizens at Citizens' premises at its Cookeville central office on rates, terms and conditions that are just, reasonable and non-discriminatory, pursuant to 47 U.S.C. § 251(c)(6). In

Citizens' letter of April 27, 2004 and its letter of August 2, 2004 (Exhibits B and D respectively), Citizens takes the position that collocation is only available to CLECs. However, there is nothing in the language of 47 U.S.C. § 251(c)(6) that limits collocation to CLECs. 47 U.S.C. § 251(c)(6), which pertains to collocation, provides that each ILEC has:

The duty to provide, on rates, terms, conditions that are just, reasonable and non-discriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State Commission that physical collocation is not practical for technical reasons or because of space limitations.

Iris seeks to collocate in Citizens' Cookeville central office in order to interconnect with Citizens so that it can pick up traffic from Citizens and other carriers for transport out of Cookeville and to hand off traffic that it has transported to Cookeville to Citizens and other carriers. Iris does not seek access to unbundled network elements. Citizens' duty under Section 251(c) is to telecommunications carriers. For example, 47 U.S.C. § 251(c)(2) provides that the incumbent local exchange carrier has

The duty to provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . (emphasis added)

Iris is a telecommunications carrier within the meaning of 47 U.S.C. § 153(44). Therefore, Iris is entitled to collocation.

Citizens appears to argue that if Iris is not a CLEC, it must be an IXC. (See Exhibit D) This is not true. Iris provides transport for CLECs and IXCs, it does not

complete calls to end users. As indicated in its communication to Citizens (See Exhibit C), Iris merely prefers to use its own facilities to transport in and out of Citizens' Cookeville central office. In other words, Iris does not want to pay to use Citizens' network for transport when Iris owns facilities on the same route (See Exhibit C). Iris does not, nor does it intend to complete calls to end users. Citizens will continue to earn its normal tariff rates for switching and access charges from Iris' customers who complete the calls. Therefore, contrary to Citizens' assertion in Exhibit D, Iris is not attempting to use collocation as a mechanism to avoid access charge rate elements for the provision of interexchange service. Iris does not provide interexchange service and such fees will be paid by the interexchange carriers who complete the calls, as applicable.

Furthermore, the Authority has approved a collocation agreement between Iris and another ILEC in Tennessee. In TRA Docket No. 03-00443, the TRA approved a collocation agreement between Iris and Bellsouth.³ Therefore, there is precedent before the TRA for approval of such an agreement.

Standard of Review

An arbitration is to be resolved by the standards established in 47 U.S.C. § 252 and the requirements of § 251, including the regulations prescribed by the Federal Communications Commission pursuant to § 251 of the Telecommunications Act.

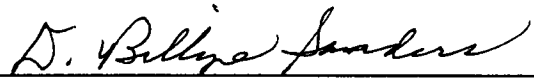
³ Order dated March 31, 2004.

Relief Requested

Iris respectfully requests that the TRA find that Citizens has a duty to allow Iris to collocate in Citizens Cookeville main central office and that the TRA enforce such duty and require Citizens to negotiate a collocation/interconnection agreement with Iris. In the alternative, Iris requests that the Authority treat Iris' petition as a complaint and convene a contested case to require Citizens to provide collocation to Iris. In either event, Iris requests that Citizens be ordered to negotiate a collocation agreement with Iris on rates, terms and conditions that are just, reasonable and non-discriminatory.

Respectfully submitted,

**TENNESSEE INDEPENDENT
TELECOMMUNICATIONS GROUP, LLC
d/b/a IRIS NETWORKS**

By: 

D. Billye Sanders, Esq.
Waller Lansden Dortch & Davis, PLLC
511 Union Street, Suite 2700
Nashville, Tennessee 37219-1760
(615) 850-8951

Attorney for Iris Networks

VERIFICATION

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

I, Ellen Bryson, being duly sworn state that I am the Chief Manager of Independent Telecommunications Group, LLC d/b/a Iris Networks, the Petitioner in the subject proceeding; that I am authorized to make this verification of behalf of Iris Networks; that I have read the foregoing Petition and Exhibits and know the content thereof; that the same are true and correct to the best of my knowledge, information and belief.

Ellen Bryson

Sworn and subscribed before me this 22nd day of September, 2004

Nancy J. Swezey
Notary Public


My Commission Expires : 1-26-2008

NOTARY PUBLIC
NANCY J. SWEZEY
1050914 4

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Petition was served by U.S. Mail, postage prepaid, on this 23rd day of September, 2004 to:

Citizens Telecommunication Company of Tennessee, L.L.C.
c/o Frontier, a Citizens telecommunications company
180 South Clinton Avenue, 5th Floor
Rochester, New York 14646
Attention: Gregg C. Sayre
Associate General Counsel, Eastern Region



D. Billye Sanders

WALLER LANSDEN DORTCH & DAVIS

A PROFESSIONAL LIMITED LIABILITY COMPANY

NASHVILLE CITY CENTER

511 UNION STREET, SUITE 2100

POST OFFICE BOX 198966

NASHVILLE, TENNESSEE 37219-8966

(615) 244-6380

FAX: (615) 244-6804

www.wallerlaw.com

WALLER LANSDEN DORTCH & DAVIS, LLP
AFFILIATED WITH THE PROFESSIONAL LIMITED LIABILITY COMPANY
520 SOUTH GRAND AVENUE, SUITE 800
LOS ANGELES, CALIFORNIA 90071
(213) 362-3680

D. Billye Sanders
(615) 850-8951
billye.sanders@wallerlaw.com

WALLER LANSDEN DORTCH & DAVIS
A PROFESSIONAL LIMITED LIABILITY COMPANY
809 SOUTH MAIN STREET
POST OFFICE BOX 1035
COLUMBIA, TENNESSEE 38402-1035
(931) 388-6031

April 15, 2004

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Roderick Cameron
Interconnection Manager
Frontier Communications
180 South Clinton Avenue
Rochester, New York 14646

Re: Request for Collocation

Dear Mr. Cameron:

My client, Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks, is a competitive access provider/carriers' carrier certified by the Tennessee Regulatory Authority to provide services in the State of Tennessee. I am contacting you because Iris Networks would like to collocate in the Cookeville main central office of Frontier/Citizens in the State of Tennessee. Please contact me so that we may proceed with negotiating a collocation agreement.

Thank you in advance for your cooperation in this matter.

Sincerely,



D. Billye Sanders
Attorney for Iris Networks

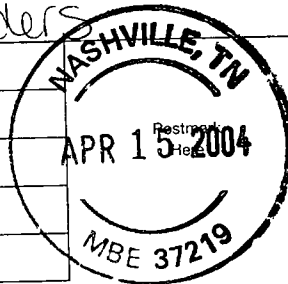
DBS/hmd

cc: Ellen Bryson, Chief Manager

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

D. Buller Sanders

Postage \$
Certified Fee
Return Receipt Fee
(Endorsement Required)
Restricted Delivery Fee
(Endorsement Required)
Total Postage & Fees \$



Recipient's Name (Please Print Clearly) (to be completed by mailer)

Roderick Cameron

Street, Apt. No., or PO Box No

Frontier Communications Clinton Ave

City, State, ZIP+4

Rochester, NY 14646

PS Form 3800, February 2000

See Reverse for Instructions

7099 3400 0017 6526 2870

Track & Confirm

Current Status

You entered 7099 3400 0017 6526 2870

Your item was delivered at 9 03 am on April 20, 2004 in ROCHESTER,
NY 14604

Notification Options

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Frontier A Citizens Communications Company
180 South Clinton Avenue – 5th. Floor
Rochester, New York 14646

April 27, 2004

D. Billye Sanders
Waller Lansden Dortch & Davis
511 Union Street, Suite 2100
PO Box 198966
Nashville, TN 37219-8966

Re: Request on behalf of Tennessee Independent Telecommunications
Group, LLC d/b/a Iris Networks for Collocation

Dear D. Billye Sanders.

This letter is in response to your letter dated April 15, 2004 on behalf of Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks ("Iris Networks") requesting collocation with Citizens Telecommunications Company of Tennessee L.L.C. ("Citizens") in Cookeville, TN.

In another letter you had sent to Gregg Sayre at Citizens on the same date as above (Re: Iris Networks DS-3 Order over Twin Lakes/Citizens OC-12 Facility), you stated "*Iris Networks is not an interexchange carrier, it is a competitive access carrier/carriers' carrier. Iris Networks transports traffic on a wholesale basis and therefore does not serve end users.*" As a result, Iris Networks is not considered a Competitive Local Exchange Carrier and is not legally entitled to collocate in Citizens' Cookeville central office.

Please feel free to contact me with any further questions on this request

Regards,



Roderick Cameron
Interconnection Manager
(585)777-5131 voice
(585)424-1196 fax
roderick.cameron@frontiercorp.com

WALLER LANSDEN DORTCH & DAVIS

A PROFESSIONAL LIMITED LIABILITY COMPANY

NASHVILLE CITY CENTER

511 UNION STREET, SUITE 2100

POST OFFICE BOX 198966

NASHVILLE, TENNESSEE 37219-8966

(615) 244-6380

FAX (615) 244-6804

www.wallerlaw.com

WALLER LANSDEN DORTCH & DAVIS, LLP
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LOS ANGELES, CALIFORNIA 90071
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D. Billye Sanders

(615) 850-8951

billye.sanders@wallerlaw.com

WALLER LANSDEN DORTCH & DAVIS
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809 SOUTH MAIN STREET
POST OFFICE BOX 1035
COLUMBIA, TENNESSEE 38402-1035
(931) 388-6031

July 21, 2004

Mr. Roderick Cameron
Interconnection Manager
Frontier Communications
180 South Clinton Avenue
Rochester, New York 14646

Re: Request for Collocation

Dear Rod:

This letter comes as a follow up to your letter dated April 27, 2004 and our conference call on May 25, 2004, which included Gregg Sayre and Richard Ebner, regarding Iris' request for collocation in Citizens Cookeville Central Office. After reviewing your correspondence and considering your position on the call, Iris is still of the opinion that Citizens is required to allow Iris to collocate pursuant to Section 251(c)(6) of the Telecommunications Act. Collocation under Section 251(c) is not limited to competitive local exchange carriers (CLECs). Incumbent LECs have the duty to provide collocation to telecommunication carriers. Therefore, Citizens should not refuse the collocation request of a telecommunications carrier such as Iris. Iris seeks to collocate in Citizens' Cookeville Central Office in order to pick up traffic from Citizens and other carriers for transport and to hand off traffic that it has transported to Cookeville to Citizens and other carriers. Iris prefers to use its own facilities to transport in and out of your Cookeville Central Office and therefore does not want to pay to use Citizens network for transport into or out of your facility. Iris does not, nor does it intend to complete calls to end-users. Citizens would continue to earn its normal tariffed rates for switching and completing calls.

Mr. Sayre indicated that Citizens would provide Iris transport service into its Cookeville Central Office pursuant to 47 § USC Section 251(g) using Citizens' entrance facilities at its tariff rates. However, as stated above, Iris wishes to use its own facilities. Further, Section 251(g) pertains to the provision of exchange access, information access, and exchange services by a local exchange

July 21, 2004

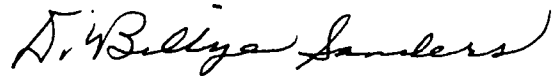
Page 2

carrier to interexchange carriers and information service providers. Iris is not an interexchange carrier or an information service provider. Iris is a telecommunications carrier that provides long haul transport and is entitled to collocation under Section 251(c)(6). Iris is licensed by the Tennessee Regulatory Authority (TRA) and as indicated in our telephone conversation, BellSouth has entered into a collocation agreement with Iris, which has been approved by the TRA.

We hope you will reconsider your position and voluntarily allow Iris to collocate in your Cookeville Central Office.

Thank you in advance for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "D. Billye Sanders".

D. Billye Sanders
Attorney for Iris Networks

DBS/hmd

cc: Gregg Sayre, Esq.
Ellen Bryson
Richard Ebner

August 2, 2004

Ms. D. Billye Sanders
Waller, Lansden, Dortch & Davis
Nashville City Center
511 Union Street, Suite 2100
P.O. Box 198966
Nashville, TN 37219-8966

RE: Iris Request for Collocation

Dear Ms. Sanders:

In response to your letter of July 21, 2004, your description of Iris is contradictory, but under neither description is Iris entitled to collocation.

On page 1 of your letter you state that Iris is a telecommunications carrier entitled to collocation pursuant to section 251(c)(6) of the Telecommunications Act. You imply that Iris is not acting as a CLEC by stating that section 251(c)(6) is not limited to CLECs. If Iris is a telecommunications carrier and not a CLEC, it must be an interexchange carrier. However, on page 2 of your letter you state that Iris is not an interexchange carrier. Our understanding is that in our service territory, Iris would not be acting as a regulated carrier of any kind.

If Iris is acting as a CLEC, then Iris needs a full interconnection agreement. We would expect Iris to demonstrate that it has appropriate CLEC authority and has filed or is filing local exchange service tariffs covering our territory. Under those circumstances we would negotiate a collocation attachment to the interconnection agreement that would allow Iris to collocate solely for the purpose of exchanging local switched traffic with Citizens or for the purpose of accessing UNE loops at the central office in question. Under FCC decisions, each voice grade channel on a UNE loop must have an associated local exchange service. We do not think that this is what Iris is requesting. This, however, is all section 251(c)(6) requires us to provide.

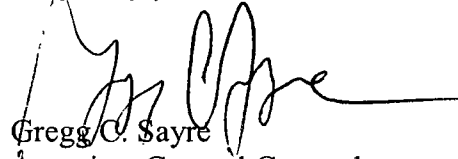
If Iris is acting as an interexchange carrier contrary to your statement on page 2 of your letter, we do not agree that the Telecommunications Act requires us to open our central office for Iris to establish an interexchange carrier Point of Presence (POP). The Telecommunications Act preserves the access charge regime until changed by the FCC per section 251(g), and section 251(c)(6) is clearly limited to collocation facilities for CLECs. We do not permit interexchange carriers to collocate and create a POP for the purpose of avoiding some of the charges for special access circuits, and the Act does not require us to do so.

If Iris is acting as an unregulated interexchange transport provider, Iris is not a "carrier" of any kind under the Act; it is equivalent to an end user. We are not required to allow end users to collocate and respectfully decline this request. If Iris is not acting as a CLEC, it needs to find its own real estate.

The fact that Iris has a collocation agreement with BellSouth shows only that Iris is acting as a CLEC in BellSouth's territory, or that BellSouth is intentionally or unintentionally allowing unregulated interexchange transport providers to collocate. This does not convince us that Citizens is required to allow Iris to collocate in Citizens' territory.

In response to your discussion of section 251(g), Citizens' tariffed access charges apply to interexchange carriers and end users alike, and in fact they also apply to CLECs that are using circuits for interexchange rather than local services. Whether or not Iris is an interexchange carrier, and whether or not Iris is any kind of carrier, collocation is not available as a mechanism to avoid access charge rate elements for the provision of interexchange service.

Very truly yours,



Gregg C. Sayre
Associate General Counsel –
Eastern Region

GCS: hmj